

REMARKS/ARGUMENTS

In the Official communication filed October 5, 2009, the Examiner required the election of a single species from those recited on page 2 of the Office Action.

Accordingly, Applicants elect the species of Group A (Claim 1) drawn to the release profile. Claims 1, 4 and 11-28 read on the elected species.

Applicants request that should the elected species be found allowable, the Examiner expand the search to include non-elected species.

Divisional applications filed thereafter claiming the non-elected species should not be subject to a double patenting ground of rejection (35 U.S.C. § 121, In re Joyce (Comr. Pats. 1957) 115 USPQ 412).

The Examiner alleges that the species recited in the specification are patentably distinct. However, the burden of proof is on the Office to provide reasons and/or examples to support any conclusions with regard to patentable distinction (M.P.E.P. § 803).

The Examiner has not given adequate reasons and/or examples to support patentable distinctness. Rather, the Office merely states conclusions.

Accordingly, the Office has failed to meet the burden necessary to sustain the election requirement, and the Office has not shown that a burden exists in searching all of the claims.

Further, the MPEP at § 803 states as follows:

“If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on its merits, even though it includes claims to distinct and independent inventions.”

Applicants submit that a search of the entire application would not constitute a serious burden on the Office.

Applicants make no statement regarding the patentable distinctness of the species but note that for the restriction to be proper there must be patentable differences between the species as claimed (M.P.E.P. § 808.01(a)).

Applicants election is for examination only.

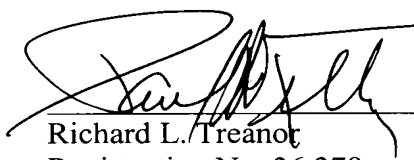
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